UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

KALAMAZOO COUNTY CONVENTION AND VISITORS BUREAU, INC., d/b/a DISCOVER KALAMAZOO, a Michigan nonprofit corporation,

Plaintiff,

v.

SOUTHWEST MICHIGAN FIRST CORPORATION, a Michigan nonprofit corporation,

Defendant.
____/

Case No.
Hon.

BODMAN PLC
By: Dennis J. Levasseur (P39778)
Michael J. Serra (P77741)
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777
dlevasseur@bodmanlaw.com
mserra@bodmanlaw.com

- and -

HUESCHEN & SAGE PLLC
By: G. Patrick Sage II (P48110)
Joanna T. French (P58707)
Seventh Floor, The Kalamazoo Building
107 West Michigan Avenue
Kalamazoo, Michigan 49007
(269) 382-0030
gps@hueschen-sage.us
jtf@hueschen-sage.us
Attorneys for Plaintiff
____/

COMPLAINT AND DEMAND FOR JURY TRIAL

April 4, 2017

INTRODUCTION

Plaintiff Kalamazoo County Convention and Visitors Bureau, Inc. d/b/a Discover Kalamazoo ("Discover Kalamazoo") and defendant Southwest Michigan First Corporation are neighboring nonprofit organizations with similar missions – to promote Southwest Michigan. Discover Kalamazoo has used the mark, 269, to identify its services since 2010. Well aware of the time and money that Discover Kalamazoo spent to develop the mark, 269, defendant approached Discover Kalamazoo about using the mark, 269, for its planned regional publication about Southwest Michigan. Discover Kalamazoo was open to an agreement only if its trademark rights were protected and the public would not be confused as to its affiliation with defendant. Defendant rejected and refused that simple, mutually beneficial, request.

In blatant disregard for Discover Kalamazoo's rights, defendant began publishing its *269 Magazine* and using various other marks that are confusingly similar to Discover Kalamazoo's use of 269. To make matters worse, defendant recently filed a proceeding with the United States Patent and Trademark Office claiming that Discover Kalamazoo does not have superior rights in the mark, 269. Discover Kalamazoo has no choice now but to file this suit to protect its valuable intellectual property rights and prevent public confusion.

Therefore, plaintiff Discover Kalamazoo, by its undersigned attorneys, for its complaint against defendant, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action arising from defendant's misuse of Discover Kalamazoo's trademarks. The claims alleged in this complaint arise under the Lanham Act, 15 U.S.C. §§1051 – 1141, the Michigan Consumer Protection Act, M.C.L.A. §§445.901 – 445.922, the Michigan Trademarks and Service Marks Act, M.C.L.A. §§429.31 – 429.46, and federal and Michigan common law.

2. Discover Kalamazoo is a Michigan nonprofit corporation with offices at 141 East Michigan Avenue, Suite 100, Kalamazoo, Michigan 49007. It is the destination marketing organization for Southwest Michigan that promotes the area as a distinctive visitor experience to benefit the regional economy and its residents.

3. Defendant is a Michigan nonprofit corporation with offices at 241 East Michigan Avenue, Suite 135, Kalamazoo, Michigan 49007. It is an organization of privately funded economic development advisors that purports to support economic success in Southwest Michigan.

4. This Court has subject matter jurisdiction over Discover Kalamazoo's federal law claims under 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338. This Court has supplemental jurisdiction over Discover Kalamazoo's state law claims under 28 U.S.C. §1367.

5. This Court has personal jurisdiction over defendant because it is a citizen of Michigan.

6. Venue is proper in the Western District of Michigan under 28 U.S.C. §1391 because defendant resides in the Western District of Michigan and a substantial part of the events giving rise to the claims occurred in the Western District of Michigan.

DISCOVER KALAMAZOO AND ITS MARKS

7. Since 2006, Discover Kalamazoo has been the promotions organization for community events, business, recreation, sports, leisure, tourism, among other things, occurring in Southwest Michigan.

8. By partnering with diverse businesses and other organizations, any and all happenings in Southwest Michigan are generally promoted by Discover Kalamazoo.

9. Discover Kalamazoo uses online and in-person marketing to support its role in the community, including: a support staff of sales, service, and communications professionals; a

dedicated visitor information phone line; a visitor information center; an interactive website; and several active social media accounts.

10. Discover Kalamazoo invests significant time, money, and manpower to continually develop its brand as the one-stop source promoting Southwest Michigan.

11. In July 2010, Discover Kalamazoo launched an innovative program using formatives of the numbers, 269 (collectively, "269 Marks"), to identify and distinguish its promotional services about Southwest Michigan.

12. The first step was to create a list of "269 Cool Things To Do" where it encouraged residents and visitors to submit their favorite things to do in Southwest Michigan.

13. The list of "269 Cool Things To Do In Area Code 269" has become widely known by residents, visitors, and potential visitors and is branded by the 269 Marks.

14. Other examples of marketing using the 269 Marks since 2010 include:

(a) Print and online advertisements in a regional news source called the KALAMAZOO GAZETTE® which has approximately two hundred thousand readers;

(b) Print and online advertisements in MLIVE®, a state-wide news source, which has approximately three million unique monthly visitors[1] to its website;

(c) Print advertisements in Michigan Trails Magazine;

(d) Print advertisements in the Grand Rapids Visitor Guide;

(e) Print advertisements in the Western Michigan University Parent Guide;

(f) Print advertisements in PURE MICHIGAN®, a campaign to promote tourism in Michigan; and

(g) Social media campaigns on FACEBOOK®, TWITTER® (*e.g.*, @269coolthings, #269things), PINTEREST®, INSTAGRAM®, among others.

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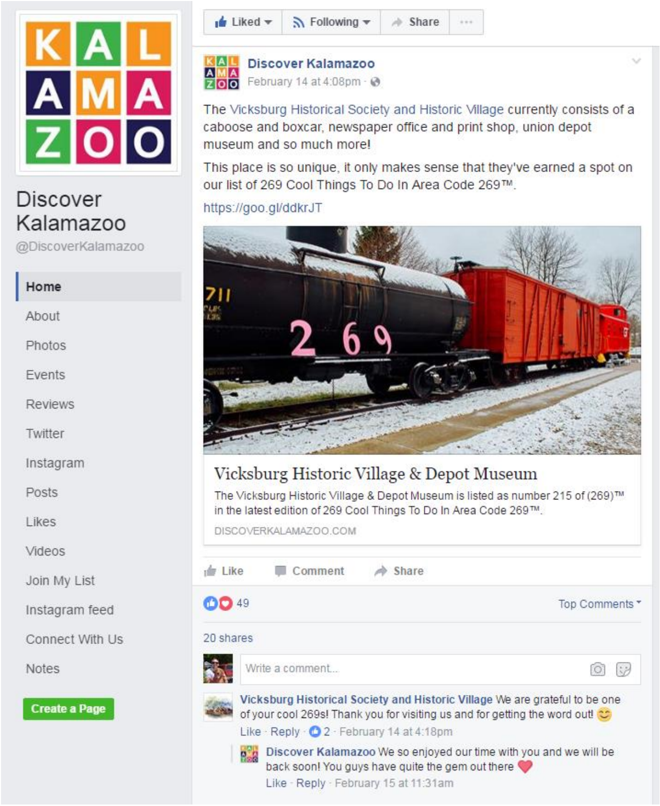
[1] "Unique monthly visitors" refers to the number of distinct individuals requesting pages from a website during a given period, regardless of how often they visit.

15. Discover Kalamazoo has spent over $144,000 for the print advertisements identified above.

16. As investment in the 269 Marks increased, so did traffic to Discover Kalamazoo's website ("Website"). There were approximately 600 unique monthly visitors to the Website in 2010. Now, there are approximately 4,000 unique monthly visitors to the Website. In some months, it can be as high as 6,000 unique monthly visitors.

17. Discover Kalamazoo's social media accounts also prominently display the 269 Marks and have experienced increased traffic since 2010. Its FACEBOOK® page has been "liked" by over 53,000 users, it has over 12,000 followers on TWITTER®, and over 16,000 followers on INSTAGRAM®. A screenshot example of Discover Kalamazoo's FACEBOOK® page displaying the 269 Marks is shown immediately below:

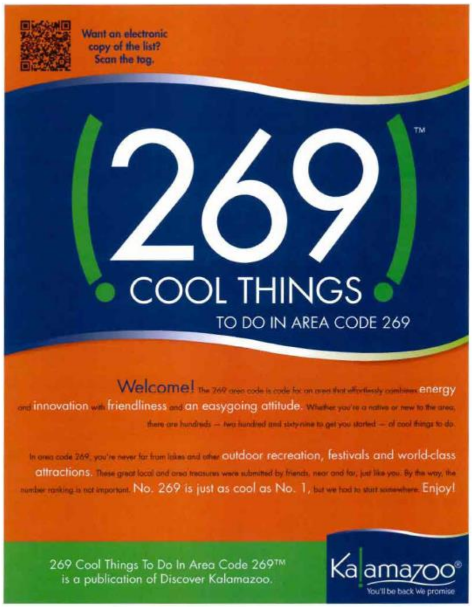

KAL
AMA
ZOO
Discover Kalamazoo
@DiscoverKalamazoo
Home
About
Photos
Events
Reviews
Twitter
Instagram
Posts
Likes
Videos
Join My List
Instagram feed
Connect With Us
Notes
Create a Page
Liked
Following
Share
Discover Kalamazoo
February 14 at 4:08pm
The Vicksburg Historical Society and Historic Village currently consists of a caboose and boxcar, newspaper office and print shop, union depot museum and so much more!
This place is so unique, it only makes sense that they've earned a spot on our list of 269 Cool Things To Do In Area Code 269™.
https://goo.gl/ddkrJT
2 6 9
Vicksburg Historic Village & Depot Museum
The Vicksburg Historic Village & Depot Museum is listed as number 215 of (269)™ in the latest edition of 269 Cool Things To Do In Area Code 269™.
DISCOVERKALAMAZOO.COM
Like
Comment
Share
49
Top Comments
20 shares
Write a comment...
Vicksburg Historical Society and Historic Village We are grateful to be one of your cool 269s! Thank you for visiting us and for getting the word out!
Like · Reply · 2 · February 14 at 4:18pm
Discover Kalamazoo We so enjoyed our time with you and we will be back soon! You guys have quite the gem out there
Like · Reply · February 15 at 11:31am

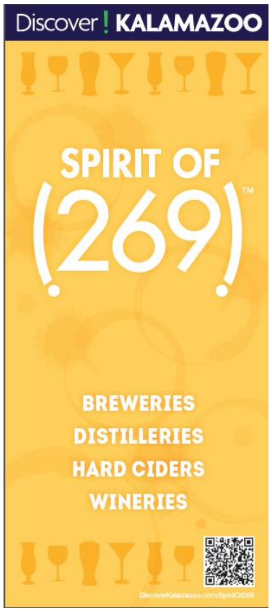
18. Discover Kalamazoo uses the 269 Marks in its own printed publications that are distributed to various businesses, community organizations, hotels, and restaurants in Southwest

Michigan. It also distributes print publications to "welcome centers" and visitor information distribution points throughout the state of Michigan and across the northern regions of Illinois, Indiana, and Ohio.

19. When people from around the United States contact Discover Kalamazoo with questions about Southwest Michigan, Discover Kalamazoo shares its printed publications using the 269 Marks.

20. Since 2010, Discover Kalamazoo has distributed approximately 35,000 print versions of the "269 Cool Things To Do In Area Code 269" (listing 269 attractions in Southwest Michigan) and the "Spirit of 269" (listing breweries, wineries, and distilleries in Southwest Michigan). Immediately below are screenshots showing the cover pages of these publications:


Want an electronic copy of the list? Scan the tag.
(269)™
COOL THINGS
TO DO IN AREA CODE 269
Welcome!
energy
innovation
friendliness
an easygoing attitude.
outdoor recreation, festivals and world-class
attractions.
No. 269 is just as cool as No. 1,
Enjoy!
269 Cool Things To Do In Area Code 269™
is a publication of Discover Kalamazoo.
Kalamazoo®
You'll be back We promise


Discover! KALAMAZOO
SPIRIT OF
(269)™
BREWERIES
DISTILLERIES
HARD CIDERS
WINERIES

21. The "269 Cool Things To Do In Area Code 269" and "Spirit of 269" publications are periodically updated.

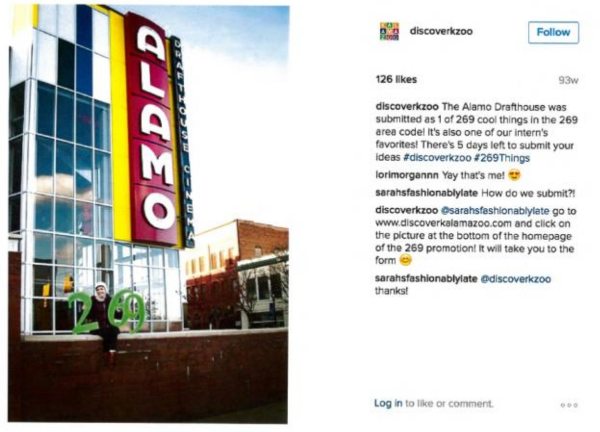
22. For example, residents and visitors regularly submit "Things To Do" to be included in the "269 Cool Things To Do In Area Code 269" which are then incorporated into the publication when new editions are released.

23. Since 2010, Discover Kalamazoo has distributed approximately 400,000 print versions of its proprietary Visitor Guide which also displays the 269 Marks.

24. Online downloads of Discover Kalamazoo's Visitor Guide have increased about threefold from 2011 to 2015.

25. Another promotion using the 269 Marks is Discover Kalamazoo's social media campaign wherein various locations within Southwest Michigan were chosen to be featured with the 269 Marks to identify those locations as tourist attractions. Screenshot examples from this campaign are shown immediately below:

#269
THINGS
discoverkzoo
Follow
43 likes
97w
discoverkzoo Can you name this iconic Kzoo location? There are so many awesome things to do/see in Kalamazoo! Stop over to our website to share some of your favorite spots! #269Things #discoverkalamazoo
mama2girls915 That's the kalamazoo valley museum! One of my daughter's most favorite spots!
eric_wagaman94 That's is the Gilmore car museum!
mama2girls915 Ha! Damn! Now I look like an idiot! It looks like a lot like it! Lol
mindiewallenius #gilmorecarmuseum
mickbalanda Gilmore Car Museum!
Log in to like or comment.


ALAMO
269
discoverkzoo
Follow
126 likes
93w
discoverkzoo The Alamo Drafthouse was submitted as 1 of 269 cool things in the 269 area code! It's also one of our intern's favorites! There's 5 days left to submit your ideas #discoverkzoo #269Things
lorimorgannn Yay that's me!
sarahsfashionablylate How do we submit?!
discoverkzoo @sarahsfashionablylate go to www.discoverkalamazoo.com and click on the picture at the bottom of the homepage of the 269 promotion! It will take you to the form
sarahsfashionablylate @discoverkzoo thanks!
Log in to like or comment.

26. Discover Kalamazoo also promotes Southwest Michigan in other ways using the 269 Marks, such as:

(a) 269 HOLIDAY TRADITIONS, for promoting holiday activities in Southwest Michigan;

(b) TEAM 269, for promoting professional sports in Southwest Michigan;

(c) WINE & DINE 269, for promoting bars and restaurants in Southwest Michigan;

(d) TREATS OF 269, for promoting bakeries, ice cream parlors, and other dessert shops in Southwest Michigan;

(e) KIDS IN 269, for promoting family friendly destinations in Southwest Michigan; and

(f) SOUNDS OF 269, for promoting theatres and other live entertainment venues in Southwest Michigan.

Examples of those uses of the 269 Marks are shown immediately below:

269™
HOLIDAY
TRADITIONS
1 CANDLELIGHT WALK
MARSHALL
2 INTERNATIONAL FESTIVAL OF LIGHTS
BATTLE CREEK
3 THE PEPPERMINT PARADE
THREE OAKS
4 W.K. KELLOGG MANOR HOUSE HOLIDAY WALK
KALAMAZOO
5 A CHRISTMAS CAROL
NEW VIC THEATRE | KALAMAZOO
6 HOLLY JOLLY TROLLEY
DOWNTOWN KALAMAZOO
7 REINDOG HOLIDAY PARADE
ST. JOSEPH
8 ZOO LIGHTS
BINDER PARK ZOO | BATTLE CREEK
9 LIGHT UP THE BLUFF
ST. JOSEPH
10 CHRISTMAS OPEN HOUSE AT CHAPIN MANSION
NILES
11 33RD ANNUAL OF CHRISTMAS PAST
CHARLTON PARK | HASTINGS
12 HOLIDAYS AT THE FELT ESTATE
SAUGATUCK

TEAM
(269)™
Kalamazoo Growlers
Men's Baseball
Lake Michigan Havoc
Men's Semi-Professional Football
Battle Creek Bombers
Men's Baseball
West Michigan Wolves
Junior Ice Hockey
Killamazoo Derby Darlins
Women's Flat Track Roller Derby
Kalamazoo Football Club
Men's Soccer
Kalamazoo Wings
Men's Ice Hockey
Kalamazoo Curling Club
Men's & Women's Curling
West Michigan Mayhem
Women's Professional Football
Kalamazoo Cobras
Men's Professional Basketball
Battle Creek Blazers
Women's Semi-Professional Basketball

WINE & DINE
(269)™
Henderson Castle
Kalamazoo
Rustica
Kalamazoo
Principle
Kalamazoo
Food Dance
Kalamazoo
Tosi's Restaurant
Stevensville
Mesa Luna
Sawyer
The Boulevard Inn & Bistro
St. Joseph
Terrace Room
New Buffalo
Schu's Grill & Bar
St. Joseph
Bravo!
Portage
Bold
Kalamazoo
Cosmo's Cucina
Kalamazoo
Nibi
FireKeepers - Battle Creek
Martell's
Kalamazoo
Salt of the Earth
Fennville
Tabor Hill Winery & Restaurant
St. Joseph
Wine Loft
Kalamazoo
Zazios
Kalamazoo
Webster's Prime
Kalamazoo

TREATS OF
(269)™
Hayloft Ice Cream Parlor
Decatur
Chocolatea
Portage
Chocolate Garden
Coloma
Caruso Candy Kitchen
Dowagiac
Pop City Popcorn
Kalamazoo
Confections with Convictions
Kalamazoo
Taste of Heaven
Kalamazoo
Heilman's Nuts & Confections
Kalamazoo
Kilwin's Chocolates
Saugatuck/South Haven/St. Joseph
Vineyards Gourmet
Coloma
Veni Sweet Shop
Niles
Mimi's Cupcakes
St. Joseph
Bit of Swiss
Stevensville
Sweetwaters Donut Mill
Kalamazoo/Battle Creek
Sherman's Dairy Bar
South Haven
Boonzaaijer Bakery
Kalamazoo
Apple Knockers
Vicksburg
Sugar Bear
Paw Paw
D'Nicio's Parlour
Kalamazoo
Plainwell Ice Cream Co.
Plainwell
Cherri's Chocol'art
Kalamazoo

KIDS IN
(269)™
Kalamazoo Nature Center
Kalamazoo
Curious Kids Museum
St. Joseph
Full Blast
Battle Creek
Splash Pad
River Oaks County Park - Galesburg
Silver Beach Carousel
St. Joseph
Air Zoo
Kalamazoo
Airway Lanes
Portage
Kids Quest
New Buffalo
Binder Park Zoo
Battle Creek
Kalamazoo Valley Museum
Kalamazoo
Sky Zone
Portage
Safari Joe's Water Park
Watervliet
Gull Meadow Farms
Richland
Pirate Chaser Sails
South Haven
Jungle Joes
Portage
Whirlpool Compass Fountain
St. Joseph
Cornwell's Turkeyville
Marshall
Sarett Nature Center
Benton Harbor
Saugatuck Dune Rides
Saugatuck
Bounceland
Kalamazoo

SOUNDS OF
(269)™
Acorn Theatre
Three Oaks
State Theatre
Kalamazoo
Portage Band Shell
Portage
Bell's Eccentric Café
Kalamazoo
Bronson Park
Kalamazoo
Entertainment District
Kalamazoo
Riviera Theatre
Three Rivers
Kalamazoo Valley Museum
Kalamazoo
Wings Event Center
Kalamazoo
Dark Horse Brewery
Marshall
Warner Vineyards
Paw Paw
Bay Pointe Inn
Shelbyville
Silver Creek Event Center
New Buffalo
The Livery Brewery
Benton Harbor
John E. N. Howard Band Shell
St. Joseph
FireKeepers Casino
Battle Creek
Four Winds Casino
New Buffalo

27. Discover Kalamazoo has two United States trademark registrations and one pending application for the 269 Marks:

(a) 269 COOL THINGS TO DO IN AREA CODE 269, U.S. Registration No. 4,484,662, for "Promoting recreation and tourism in and around the Southwest, Michigan area," claiming first use in commerce on July 10, 2010. The application to register this mark was filed on July 2, 2013 and it was registered on February 18, 2014. A photocopy of the certificate of registration is attached hereto as **Exhibit A**.

(b) SPIRIT OF 269, U.S. Registration No. 4,484,664, for "Promoting recreation and tourism in and around the Southwest, Michigan area," claiming first use on January 2, 2013. The application to register this mark was filed on July 2, 2013 and it was registered on February 18, 2014. A photocopy of the certificate of registration is attached hereto as **Exhibit B**.

(c) 269, U.S. Serial No. 86/837239, for "Promoting recreation and tourism in and around the Southwest, Michigan area," claiming first use in commerce on July 10, 2010. The application to register this mark was filed on December 2, 2015.

28. With respect to U.S. Serial No. 86/837239, the United States Patent and Trademark Office ("USPTO") found that Discover Kalamazoo's mark, 269, had acquired distinctiveness and published it in the Trademark Official Gazette on November 29, 2016.

29. On January 25, 2017, defendant filed a Notice of Opposition with the Trademark Trial and Appeal Board against the mark, 269, U.S. Serial No. 86/837239. That opposition proceeding is pending.

30. Discover Kalamazoo also has two Michigan trademark registrations for the 269 Marks:

(a) 269, Michigan Registration No. M12960, in class 38 for "Prints and publications" claiming first use in Michigan and the U.S. on July 10, 2010, and registering on May 10, 2016. A photocopy of the certificate of registration is attached hereto as **Exhibit C**.

(b) 269, Michigan Registration No. M14638, in class 107 for "Education and entertainment" claiming first use in Michigan and the U.S. on July 10, 2010 and registering on May 10, 2016. A photocopy of the certificate of registration is attached hereto as **Exhibit D**.

31. Discover Kalamazoo has used the 269 Marks continuously and exclusively since at least as early as July 10, 2010 and now possesses valuable goodwill in all of the 269 Marks.

DEFENDANT'S INFRINGEMENT OF THE 269 MARKS

32. Defendant was founded in 1999 and describes its "singular purpose" as assisting companies in growing jobs.

33. In July 2015, defendant approached Discover Kalamazoo seeking to use the 269 Marks in connection with a magazine it was planning to publish for distribution online and in-print throughout Southwest Michigan.

34. Discover Kalamazoo attempted to negotiate a license agreement with defendant for using the 269 Marks throughout the remainder of 2015 but was unable to reach an agreement.

35. In a December 18, 2015 email that was sent at 12:03 PM Eastern Standard Time, Discover Kalamazoo offered defendant an opportunity to license the 269 Marks so long as there is full attribution that the 269 Marks are owned by Discover Kalamazoo, among other terms.

36. On December 18, 2015 at 4:21 PM Eastern Standard Time, defendant filed an intent-to-use application to register the mark, 269 MAGAZINE, U.S. Serial No. 86/854159, on the Principal Register for "Magazines specializing in local current events, culture and news reporting" and "Providing general and regional news in the nature of current events reporting; providing information, news and commentary in the field of business; providing news and information in the field of culture; news agencies, namely, gathering dissemination of news; providing an internet news portal featuring links to news stories and articles in the field of current events."

37. The USPTO found defendant's application to register the mark, 269 MAGAZINE, to be "Merely Descriptive" and "Primarily Geographically Descriptive," and in response, defendant amended its application to the Supplemental Register.

38. The USPTO then suspended defendant's application to register the mark, 269 MAGAZINE, because of the likelihood of confusion with Discover Kalamazoo's prior pending application to register the mark, 269, U.S. Serial No. 86/837239.

39. Upon information and belief, defendant began publishing a regional magazine using the mark, 269 MAGAZINE, ("Magazine") in January 2016 with full knowledge of Discover Kalamazoo's prior rights in the 269 Marks.

40. Upon information and belief, the primary geographic focus of the Magazine is the seven county region that makes up Southwest Michigan.

41. Upon information and belief, print distribution of the Magazine is only found in the seven county region that makes up Southwest Michigan.

42. Upon information and belief, the purpose of the Magazine is to promote Southwest Michigan and tell the region's positive stories surrounding business expansions, entrepreneurship, leadership, philanthropy, and quality of life.

43. Ron Kitchens, defendant's current CEO, was a member of Discover Kalamazoo's Advisory Board from May 2008 to December 2010.

44. Upon information and belief, Ron Kitchens had access to Discover Kalamazoo's plans to use the 269 Marks during his time on Discover Kalamazoo's Advisory Board and understands Discover Kalamazoo's rights in the 269 Marks.

45. Heather Smith-Baker, defendant's current Editor-in-Chief of the Magazine, has been a member of Discover Kalamazoo's Advisory Board since January 2011.

46. Upon information and belief, Heather Smith-Baker understands Discover Kalamazoo's rights in the 269 Marks.

47. Upon information and belief, defendant created the Magazine in order to trade upon Discover Kalamazoo's goodwill in the 269 Marks.

48. Upon information and belief, defendant is using the mark, 269 QUOTE, for online information in the field of inspirational messages delivered via global computer information network.

49. Upon information and belief, defendant began using the mark, 269 QUOTE, since at least as early as July 20, 2016.

50. Upon information and belief, defendant uses the mark, 269 QUOTE, in order to trade upon Discover Kalamazoo's goodwill in the 269 Marks.

51. Defendant is also using the marks, 269 HOW DID I GET HERE, AROUND 269, 269 READS, and, 269 LIST, in connection with promotional services about Southwest Michigan.

52. Upon information and belief, defendant is using the marks, 269 HOW DID I GET HERE, AROUND 269, 269 READS, and, 269 LIST, to trade upon Discover Kalamazoo's goodwill in the 269 Marks.

53. Defendant registered the domain name <269mag.com> on or about June 2, 2014.

54. Upon information and belief, defendant first posted content on the website associated with the domain <269mag.com> in June 2016.

55. Upon information and belief, defendant caused such registration and use of the domain <269mag.com> in order to trade upon Discover Kalamazoo's goodwill in the 269 Marks.

56. Discover Kalamazoo has not licensed or otherwise approved defendant's use of the 269 Marks.

COUNT I

TRADEMARK INFRINGEMENT UNDER SECTION 32(1) OF THE LANHAM ACT

57. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 56 of this complaint.

58. Discover Kalamazoo owns the 269 Marks and has used them in commerce since July 2010.

59. Defendant had both actual and constructive knowledge of Discover Kalamazoo's ownership of and rights in the 269 Marks prior to defendant's infringing use of the 269 Marks.

60. Defendant adopted and continues to use in commerce the 269 Marks and/or marks confusingly similar thereto, with knowledge of Discover Kalamazoo's superior rights, and with the intent to cause confusion, mistake, and/or to deceive.

61. Defendant offers its services in the same channels of trade, the same geographic area, and to the same customers as Discover Kalamazoo.

62. Defendant's infringing use of the 269 Marks is calculated to and is likely to deceive, mislead, and confuse the relevant trade and public as to the source or sponsorship of defendant's services.

63. Defendant's conduct therefore constitutes knowing, deliberate and willful infringement of the 269 Marks in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

64. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT II

INFRINGEMENT AND USE OF FALSE DESIGNATIONS OF ORIGIN UNDER SECTION 43(a)(1)(A) OF THE LANHAM ACT

65. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 64 of this complaint.

66. Defendant is deliberately and willfully attempting to trade on Discover Kalamazoo's long-standing rights and hard-earned goodwill in the 269 Marks and the reputation established by Discover Kalamazoo in connection with its promotions and other services. Defendant is also confusing consumers as to the origin and sponsorship of defendant's services and passing off those services in commerce as those of Discover Kalamazoo.

67. Defendant's unauthorized and tortious conduct has also deprived and will continue to deprive Discover Kalamazoo of the ability to control the consumer perception of its products and services offered under the 269 Marks.

68. Defendant's conduct is likely to cause confusion, mistake, and/or deception as to the affiliation, connection, and/or association of defendant and its promotional services with Discover Kalamazoo, and as to the origin, sponsorship, and/or approval of defendant and its services, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

69. Defendant had knowledge of Discover Kalamazoo's prior use of and rights in the 269 Marks before the acts complained of herein. The knowing, intentional, and willful nature of the acts set forth herein renders this an exceptional case under 15 U.S.C. §1117(a).

70. Defendant's conduct constitutes willful infringement and the knowing use of false designations of origin in connection with its services placed into the stream of commerce, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

71. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT

72. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 71 of this complaint.

73. Discover Kalamazoo is the owner of the 269 Marks which were acquired in good faith, and which identify Discover Kalamazoo's services throughout the United States and State of Michigan.

74. Defendant's conduct constitutes willful trademark infringement under the common law of the United States and State of Michigan.

75. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT IV

COMMON LAW UNFAIR COMPETITTION

76. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 75 of this complaint.

77. Defendant's conduct constitutes willful unfair competition by passing off, misappropriation, and/or unprivileged imitation under the common law of the United States and the State of Michigan.

78. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT V

TRADEMARK INFRINGEMENT UNDER SECTION 12 OF THE MICHIGAN TRADEMARKS AND SERVICE MARKS ACT

79. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 78 of this complaint.

80. Discover Kalamazoo owns Michigan trademark registration numbers M12960 and M14638 for the mark, 269, which identifies Discover Kalamazoo's goods and services in the State of Michigan.

81. Defendant is using the mark, 269, with knowledge of Discover Kalamazoo's prior rights in the 269 Marks, and without the consent of Discover Kalamazoo, in connection with the sale, offering for sale, and/or advertising of good and services in a way which is likely to cause confusion, mistake, and/or to deceive as to the source or origin of such goods and services in violation of Section 12 of the Michigan Trademarks and Service Marks Act, M.C.L.A. §429.42.

82. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT VI

VOILATION OF THE FEDERAL ANTICYBERSQUATTING CONSUMER PROTECTION ACT

83. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 82 of this complaint.

84. Discover Kalamazoo is the owner of the 269 Marks.

85. On information and belief, defendant, with a bad faith intent to profit from the 269 Marks, registered, trafficked in, and/or used the domain name <269mag.com> in violation of Section 43(d) of the Lanham Act, 15 U.S.C. §1125(d).

86. Defendant's infringement of the 269 Marks has been, and continues to be, willful.

87. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law. Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

COUNT VII

DECEPTIVE TRADE PRACTICES IN VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

88. Discover Kalamazoo incorporates by reference the allegations in paragraphs 1 through 87 of this complaint.

89. Defendant is causing the probability of confusion or misunderstanding as to Discover Kalamazoo's sponsorship or approval of defendant's services through use of the 269 Marks, in violation of Section 3 of the Michigan Consumer Protection Act, M.C.L.A. §445.903.

90. Defendant also represents that its services are sponsored or approved by Discover Kalamazoo.

91. Discover Kalamazoo does not sponsor or approve of defendant's services.

92. Discover Kalamazoo has suffered and will continue to suffer damages, as well as the continuing loss of the goodwill and reputation established by Discover Kalamazoo in its 269 Marks. This continuing loss of goodwill cannot be properly calculated and thus constitutes irreparable harm and an injury for which Discover Kalamazoo has no adequate remedy at law.

Discover Kalamazoo will continue to suffer irreparable harm unless this Court enjoins defendant's wrongful conduct.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court enter judgment in favor of plaintiff and against defendant:

(a) Preliminarily and permanently enjoining and restraining defendant, defendant's officers, agents, subsidiaries, servants, partners, employees, attorneys and all others in active concert or participation with defendant, from using the 269 Marks, or any confusingly similar designations, whether alone or in combination with other words or designs, as trademarks, service marks, trade name components, or otherwise;

(b) Requiring defendant to deliver up for destruction all copies of the Magazine and any and all marketing materials or other items in the possession or control of defendant that bear marks that infringe the 269 Marks;

(c) Deleting the social media accounts of defendant that incorporate the 269 Marks, including, but not limited to, accounts found on FACEBOOK® and TWITTER®;

(d) Withdrawing the application to register the mark, 269 MAGAZINE, with the USPTO;

(e) Withdrawing the Opposition proceeding in the USPTO brought against the mark, 269, U.S. Serial No. 86/837239;

(f) Requiring defendant to account for and pay over to plaintiff all profits and all damages sustained by plaintiff by defendant's use of the 269 Marks;

(g) Requiring defendant to immediately transfer to plaintiff ownership of the infringing domain name <269mag.com>;

(h) Awarding plaintiff enhanced and/or treble damages for defendant's willful acts of infringement of the 269 Marks and acts of false designation of origin in violation of 15 U.S.C. §1125(a)(1)(A);

(i) Awarding plaintiff enhanced and/or punitive damages for its common law claims;

(j) Awarding plaintiff its reasonable attorneys' fees, costs, and disbursements of this action under 15 U.S.C. §1117(a), M.C.L. §445.911, and the common law; and

(k) Awarding plaintiff such other and further relief as the Court deems just.

Respectfully submitted,

BODMAN PLC

By: /s/ Dennis J. Levasseur
Dennis J. Levasseur (P39778)
Michael J. Serra (P77741)
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 393-7596
dlevasseur@bodmanlaw.com
mserra@bodmanlaw.com

- and -

HUESCHEN & SAGE PLLC
By: G. Patrick Sage II (P48110)
Joanna T. French (P58707)
Seventh Floor, The Kalamazoo Building
107 West Michigan Avenue
Kalamazoo, Michigan 49007
(269) 382-0030
gps@hueschen-sage.us
jtf@hueschen-sage.us
Attorneys for Plaintiff

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